IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

WA.No. 803 of 2007

AGAINST THE JUDGEMENT IN WPC.15755/2006 Dated 19/10/2006
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APPELLANT: RESPONDENTS 2 AND 4
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1. THE KERALA PUBLIC SERVICE COMMISSION,
REPRESENTED BY ITS SECRETARY, PATTOM,
THIRUVANANTHAPURAM.

2. THE DISTRICT OFFICER,
KERALA PUBLIC SERVICE COMMISSION,
THRISSUR.

BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC

RESPONDENTS: PETITIONER AND RESPONDENTS 1 & 3
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1. ABDUL RASHEED.K., KOORIKKATTIL HOUSE,
NEAR G.I.P. SCHOOL, POST THIRUVAZHAM KUNNU,
VIA ALANALLUR, PALAKKAD.

2. THE STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF GENERAL EDUCATION,
SECRETARIAT, THIRUVANANTHAPURAM.

3. THE DEPUTY DIRECTOR OF EDUCATION,
THRISSUR.

R1 BY ADV. SRI.KALEESWARAM RAJ
R2 BY GOVT PLEADER SRI BENNY GERVASIZ

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 18/07/2007, THE COURT ON 25/07/2007
DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN & ANTONY DOMINIC, JJ.

Writ Appeal No 803 of 2007

Dated: 25th July 2007

JUDGMENT

Radhakrishnan, J.

Public Service Commission invited applications for the post of High School Assistant in Arabic in the Thrissur district by notification published on 15.06.2004. Following are the qualifications prescribed for the post.

1) A Degree in Arabic (or Arabic as one of the optional subjects under Pattern II of Part III) and B.Ed/B.T/L.T conferred or recognised by the Universities in Kerala;

2) A Title of Oriental Learning in Arabic awarded or recognised by the Universities in Kerala and Certificate in Language Teachers Training issued by the Commissioner for Government Examinations, Kerala.

Note: (1) Post Graduate Learning in Arabic are also eligible to apply if they possess B.Ed/B.T/L.T
(2) B.Ed shall be in the concerned subject.

Petitioner also applied in response to the notification issued by the P.S.C. He was called for written test and he came out successful in

the written test and was then called for interview on 14.02.2006 and participated in the interview. Later rank list was published on 30.03.2006. Petitioner's name did not figure in the rank list; consequently he made enquiries and was informed that his name was withheld from the rank list on the ground that he has obtained B.A Degree from the Calicut University by Distant Educational Scheme (Open Stream). Petitioner did not get any communication as such from the P.S.C. Consequently he approached this court seeking a writ of mandamus directing respondents 2 and 4 therein to include his name in the rank list and to advise him on the basis of his position in the rank list and also for a declaration that he is eligible to be included in the rank list for the post of H.S.A (Arabic) in Thrissur district.

2. Public Service Commission filed counter affidavit in the writ petition. They took up the stand that B.A. Degree obtained by the petitioner through correspondence course cannot be treated as B.A. Degree obtained through regular course. Further it was pointed out that petitioner has obtained B.A. Degree in History through open stream without undergoing the course under 10 + 2 + 3 pattern. Further it is also stated that the Commission has taken a conscious

decision that a degree obtained without undergoing SSLC need not be accepted. Further it is stated that a large number of candidates who have obtained degree under regular course were available for consideration and hence limiting the zone of consideration on that basis was justified. Learned single judge noticed that the petitioner has obtained B.A Degree from Calicut University and has also obtained Bachelor's degree in Education (B.Ed) and passed the State Eligibility Test. Learned single judge noticed that the notification issued by the Commission also permitted candidates with Post Graduate in Arabic to apply if they possess B.Ed/BT/LT. Learned judge noticed that Exts. P6 and P7 would show that the petitioner has passed B.Ed examination in Arabic and obtained Master's degree in Arabic. Learned judge also referred to the decisions in State of Kerala v. Sujakumari (2006 (1) KLT 846) and Mujeeb Rahman v. State of Kerala (2005 (1) KLT 680) and took the view that petitioner was fully qualified for the post. Consequently it was held that P.S.C was not justified in excluding the petitioner from the rank list for the sole reason that he had obtained his Bachelor's degree through correspondence course. Aggrieved by the said judgment P.S.C has come up with the present appeal.

3. P.S.C submitted that there were large number of candidates who had obtained B.Ed degree after undergoing 10 + 2 + 3 pattern of study. Consequently the Commission decided to consider only those candidates who possess the qualification of 10 + 2 + 3. Further it was stated that P.S.C had noticed the distinction between a candidate who acquired qualification after undergoing regular study and a candidate who acquired the qualification through correspondence course. Commission also took up the stand that it has got power to eliminate candidates on a reasonable criteria. Reference was made to the decision of the apex court in Mohammed Riazul Usman Gani (2000 (2) S.C.C. 606) and also various decisions of this court. Reference was also made to the decisions of this court in Prathapan v. Registrar of High Court of Kerala (1984 K.L.T 625) and Antony P.A and others v. Krishnadas M.N and others (I.L.R 2007 (1) Kerala 244).

4. Sri Kaleeswaram Raj, counsel appearing for the writ petitioner,on the other hand contended that the issue raised in this case is fully covered by the decision in Mujeeb Rahman's case, supra. Learned counsel also submitted that the petitioner is fully qualified for the post on the basis of the notification issued by the

P.S.C and the Commission was not justified in not including his name in the rank list on the sole ground that he has obtained B.A Degree through correspondence course. Counsel submitted that once it is found that the petitioner was fully qualified to apply on the basis of the notification published, no power is conferred on the P.S.C to exclude a person who is fully qualified on the ground that he did not possess SSLC or Plus Two. Counsel submitted that P.S.C is bound by the qualifcation prescribed by the rule making authority. Referece was made to the decision in State of Punjab v. Manjit Singh (AIR 2003 S.C. 4580).

5. The sole reason for excluding the petitioner from the rank list is that the petitioner had not undergone the course of study of 10 + 2 + 3 pattern. P.S.C has no power to go beyond the qualification prescribed by the appointing authority which is reflected in the notification. Petitioner was fully qualified to apply on the basis of the qualification stipulated in the notification and hence he was called for the written test and also for the interview. P.S.C has now taken up the stand that they can weed out those candidates who had not undergone the course in 10 + 2 + 3 pattern. As we have already indicated, petitioner has obtained Master's degree in Arabic from the

Calicut University and also the Bachelor's Degree (B.Ed) and has passed the State Eligibility Test. Above mentioned qualifications would satisfy the qualifications prescribed in the notification. Appointing authority has no case that the petitioner does not possess the prescribed qualification. This question has been pointedly considered by this court in Mujeeb Rahman's case. Reference may be made to paragraph 6 of the judgment wherein it has been specifically held that the rule making authority has not made any distinction between persons who have acquired M.A Degree after undergoing regular course of study and those who have acquired the M.A. Degree after undergoing course of study through distance education or correspondence course. P.S.C tried to exclude the petitioner on the ground that he has not obtained the Degree through regular course of study and also did not undergo the study in the 10 + 2 + 3 pattern. P.S.C, in our view, is not justified in tinkering with the qualifications laid down by the appointing authority. Apex court in Shri Durgacharan Misra v. State of Orissa (1987 (2) U.J.S.C 657), State of Punjab v. Manjit Singh (2003) 11 S.C.C 559) and Inder Parkash Gupta v. State of J & K (2004 (6) S.C.C. 786) has clearly laid down the law that Commission should conform to the

provisions of the law and has also to abide by the rules and regulations on the subject and to take into account the policy decisions which are within the domain of the State Government and that P.S.C cannot impose its own policy decision in a matter beyond its purview. In such circumstances, we are inclined to uphold the judgment of the learned single judge and dismiss the appeal.

Sd/-

K.S. RADHAKRISHNAN
Judge

Sd/-

ANTONY DOMINIC
Judge

25/07/2007
en/

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